Dato' Seri Timor Shah Rafiq v Nautilus Tug & Towage Sdn Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCC-102–02 OF 2025
LEONG WAI HONG J
22 OCTOBER 2025

Companies and Corporations — Directors — Removal — Validity of removal of directors when impugned removal was not on the agenda in notice of board of directors meeting — Whether board of directors could discuss and decide on matter not stated in the agenda — Whether removal of a director was valid if it was not on the agenda in the notice of board of directors meeting — Whether there was a breach of natural justice — Companies Act 2016 s 58

The plaintiff filed the present originating summons ('the OS') for, inter alia, the following orders: (a) a declaration that the removal of the plaintiff as the director of the defendant on 23 December 2024 was unlawful, null, and void; (b) a declaration that the form lodged by the defendant with the Companies Commission of Malaysia ('CCM') pursuant to s 58 of the Companies Act 2016 was unlawful, null, and void; and (c) an order directing the defendant to take all necessary steps to ensure that the records of the defendant with the CCM reflected the plaintiff's directorship in the defendant and that his office of director in the defendant had never been vacated. The plaintiff's case was that there was a wrongful and improper removal of the plaintiff as a director of the defendant through the misapplication of the automatic vacation provisions in the defendant's articles of association ('impugned removal'). The impugned removal was orchestrated and carried out by the majority directors of the defendant at a board of directors meeting on 23 December 2024 ('the December BODM') by wrongfully alleging or declaring that the plaintiff's office of director had become vacant pursuant to articles 72(g) and/or (h) of Table A in the Fourth Schedule of the Companies Act 1965, which the defendant had adopted as its articles of association. The plaintiff argued that the impugned removal was not on the agenda on the notice of the December BODM sent to the plaintiff prior to the meeting. The general issue for the court's determination was whether the board of directors could discuss and decide on a matter not stated in the agenda. The specific issue was whether the removal of a director was valid if it was not on the agenda in the notice of a board of directors meeting.

Held, allowing the OS prayers (i) to (v) with costs of RM30,000 subject to allocatur:

(1) The defendant had breached natural justice by failing to place the issue of the plaintiff purported breach of articles 72(g) and (h) on the board of directors meeting agenda so that the plaintiff was notified of the action to declare his removal as a director so that he could be given an opportunity to defend himself (see para 16).

(2) In the Court of Appeal case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 (CA), Gopal Sri Ram JCA speaking for the Court of Appeal considered the proposition to be well settled, relying on *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523, that unless the articles of a company provide to the contrary, no meeting of a board is valid unless reasonable notice of it, and the relevant agenda that is to be discussed at it, is given to the directors (see para 19).

(3) In conclusion, the court held that a board of directors could not discuss and decide on a matter not stated in the agenda. The court also held that the removal of a director was not valid if it was not on the agenda in the notice of a board of directors meeting (see para 29).

[Bahasa Malaysia summary

Plaintif memfailkan saman pemula semasa ('SP') untuk, antara lain, perintah-perintah berikut: (a) pengisytiharan bahawa pemecatan plaintif sebagai pengarah defendan pada 23 Disember 2024 adalah menyalahi undang-undang, terbatal dan tidak sah; (b) pengisytiharan bahawa borang yang dikemukakan oleh defendan dengan Suruhanjaya Syarikat Malaysia ('SSM') menurut s 58 Akta Syarikat 2016 adalah menyalahi undang-undang, terbatal dan tidak sah; dan (c) perintah yang mengarahkan defendan untuk mengambil semua langkah yang perlu bagi memastikan rekod defendan dengan SSM mencerminkan jawatan pengarah plaintif dalam defendan dan jawatan pengarahnya dalam defendan tidak pernah dikosongkan. Plaintif mendakwa bahawa beliau telah dipecat secara salah dan tidak wajar sebagai pengarah defendan melalui salah guna peruntukan pengosongan automatik dalam perkara persatuan defendan ('pemecatan yang dipertikaikan'). Pemecatan yang dipertikaikan tersebut telah dirancang dan dijalankan oleh pengarah-pengarah majoriti defendan pada mesyuarat lembaga pengarah pada 23 Disember 2024 ('MLP Disember') dengan mendakwa atau mengisytiharkan secara salah bahawa jawatan pengarah plaintif telah kosong menurut perkara 72(g) dan/atau (h) Jadual A dalam Jadual Keempat Akta Syarikat 1965, yang telah diterima pakai oleh defendan sebagai perkara persatuannya. Plaintif berhujah bahawa Pemecatan yang Dipertikaikan tersebut tidak ada dalam agenda pada notis MLP Disember yang dihantar kepada plaintif sebelum mesyuarat. Isu umum untuk penentuan mahkamah adalah sama ada lembaga pengarah boleh membincangkan dan memutuskan perkara yang tidak dinyatakan dalam agenda. Isu khusus adalah sama ada

pemecatan pengarah adalah sah jika ia tidak ada dalam agenda dalam notis mesyuarat lembaga pengarah.

Diputuskan, permohonan (i) hingga (v) SP dibenarkan dengan kos sebanyak RM30,000, tertakluk kepada alokatur:

(1) Defendan telah melanggar keadilan asasi apabila gagal meletakkan isu berhubung plaintif yang didakwa melanggar perkara 72(g) dan (h) dalam agenda mesyuarat lembaga pengarah supaya plaintif dimaklumkan tentang tindakan untuk mengisytiharkan pemecatannya sebagai pengarah agar dia boleh diberi peluang untuk membela diri (lihat perenggan 16).

(2) Dalam kes Mahkamah Rayuan *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 (MR), Gopal Sri Ram HMR yang berucap bagi pihak Mahkamah Rayuan menganggap kedudukannya sudah mantap, bergantung pada *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523, bahawa melainkan jika perkara syarikat memperuntukkan sebaliknya, tiada mesyuarat lembaga pengarah adalah sah melainkan notis yang munasabah mengenainya, dan agenda berkaitan yang akan dibincangkan di dalamnya, diberikan kepada para pengarah (lihat perenggan 19).

(3) Kesimpulannya, mahkamah memutuskan bahawa lembaga pengarah tidak boleh membincangkan dan memutuskan perkara yang tidak dinyatakan dalam agenda. Mahkamah juga memutuskan bahawa pemecatan pengarah adalah tidak sah jika ia tidak ada dalam agenda dalam notis mesyuarat lembaga pengarah (lihat perenggan 29).]

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770; [1995] 1 MLRA 546, CA (refd)

Bentley Capital Ltd and Another v Keybridge Capital Ltd [2019] FCA 1675, FC (refd)

Dhami v Martin and Others (2010) 79 ACSR 121, SC (refd)

Dr Mahesan & Ors v Ponnusamy & Ors [1994] 3 MLJ 312, HC (not folld)

Efstathis v The Greek Orthodox Community of St George [1989] 1 Qd R 146 (refd)

Gordon v Allied Meridian Pty Ltd [1999] NSWSC 558, SC (refd)

McLure v Mitchell (1974) 6 ALR 471; (1974) 24 FLR 115 (refd)

Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors [2021] 8 MLJ 243, HC (not folld)

The Bodega Company Ltd, Re [1904] 1 Ch 276, Ch D (refd)

Turnbull v West Riding Athletic Club (Leeds) Ltd [1894] WN 4, Ch D (refd)

Young v Ladies' Imperial Club, Limited [1920] 2 KB 523, CA (refd)

Legislation referred to

Companies Act 1965 (repealed by the Companies Act 2016) Fourth Schedule
Companies Act 2016 s 58

Puteri Shehnaz bt Abdul Majid (with Sasha Ravindran and Samantha Siow San San) (Cheah Teh Su) for the applicant.
Sivarajan a/l Navaratnam (with Maurice Ernest Scully and Sheena Stephanie Sebastian) (M Scully) for the first defendant.

Leong Wai Hong J:

INTRODUCTION

[1] The plaintiff filed an OS for, inter alia, the following orders:

(a) a declaration that the purported removal of the plaintiff as a director of the defendant and/or vacancy of the plaintiff's office of director in the defendant on or around 23 December 2024 is unlawful, null, and void;

(b) a declaration that the form lodged by the defendant with the Companies Commission of Malaysia pursuant to s 58 of the Companies Act 2016 viz the notification of change in the Register of Directors, Managers and Secretaries notifying of the alleged vacancy of the plaintiff's office of director in the defendant is unlawful, null, and void; and

(c) an order directing the defendant to take all necessary steps to ensure that the records of the defendant with the Companies Commission of Malaysia reflect the plaintiff's directorship in the defendant and that his office of director in the defendant has never been vacated, including but not limited to lodging the necessary notification and documents with the Companies Commission of Malaysia to that effect, within eight days of being served with the sealed order herein.

BACKGROUND FACTS

The contentions of the plaintiff (see plaintiff's written submission encl 65 paras 1–10)

[2] The plaintiff's case is that there was a wrongful and improper removal of the plaintiff as a director of the defendant through the misapplication of the automatic vacation provisions in the defendant's articles of association ('impugned removal').

[3] The impugned removal was orchestrated and carried out by the majority directors of the defendant at a board of directors meeting on

23 December 2024 ('December BODM') by wrongfully alleging or declaring that the plaintiff's office of director had become vacant pursuant to articles 72(g) and/or (h) of Table A in the Fourth Schedule of the Companies Act 1965, which the defendant had adopted as its articles of association.

Impugned removal was not on the agenda in the notice of the December BODM sent to the plaintiff

[4] The impugned removal was not on the agenda in the notice of the December BODM sent to the plaintiff prior to the meeting; and although the plaintiff had attended the December BODM for three hours, the majority directors carried out the impugned removal in his absence, after he had left the meeting.

[5] An extract of the minutes of the December BODM shows that the issue of vacation of the plaintiff's directorship was raised, discussed and/or deliberated upon under a new agenda item — one that did not appear in the original agenda sent to the plaintiff prior to the meeting — after the plaintiff left the meeting.

[6] The defendant and/or majority directors never notified or informed the plaintiff about the impugned removal, and he had no idea about it until one month later (on or around 24 January 2025) when he was served with a striking out application in one of the pending litigation between the parties, wherein it was alleged that as he was no longer a director, he thus had no locus standi to maintain the action and the action ought to be struck out.

[7] Similar striking out applications have since been filed by the majority directors and/or their faction in various other suits, either on their own accord or on behalf of the defendant, all relying on the impugned removal and alleged loss of locus standi as a basis.

[8] Some of these other suits are derivative actions against the majority directors and/or their faction, in respect of which the court had granted leave to the plaintiff to commence in the defendant's name and for the benefit and in the interest of the defendant.

[9] It is these legal actions, which seek to expose the wrongdoings and breaches of the majority directors and/or their faction, that they seek to thwart; and their objective was carried out by wrongfully and improperly removing the plaintiff through misapplication of the automatic vacation provisions, in breach of company law, an injunction order, and natural justice.

[10] Reliance on the automatic vacation provisions was a tactical manoeuvre by the majority directors and/or their faction. A

The contentions of the defendant

[11] The defendant contends the impugned removal is valid. B

ISSUES

[12] The general issue is whether the board of directors can discuss and decide on a matter not stated in the agenda. C

[13] The specific issue is whether the removal of a director is valid if it was not on the agenda in the notice of a board of directors meeting.

ANALYSIS OF THE COURT D

[14] The plaintiff contends his removal as a director is not valid if it was not on the agenda in the notice of a board of directors meeting. Firstly, he contends there was a breach of natural justice. Secondly, he contends such an important issue must be put on the agenda for the meeting. E

[15] I agree with the plaintiff.

Breach of natural justice F

[16] I hold that the defendant had breached natural justice by failing to place the issue of the plaintiff purported breach of articles 72(g) and (h) on the BOD meeting agenda so that the plaintiff is notified of the action to declare his removal as a director so that he can be given an opportunity to defend himself. G

[17] In a similar case of *Turnbull v West Riding Athletic Club (Leeds) Ltd* [1894] WN 4, a decision of the Chancery Division of HC of England and Wales, the court held that the director should have been given notice of the matter by placing it on the agenda and issued an injunction to restrain the Board from excluding him from any board meeting. H

[18] Similar reasoning was given in *Re The Bodega Company Ltd* [1904] 1 Ch 276 and in *Gordon v Allied Meridian Pty Ltd* [1999] NSWSC 558 (unreported). I

The board of directors cannot decide on a matter not stated in the agenda

Malaysian case

[19] In the Court of Appeal case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770; [1995] 1 MLRA 546 (CA), Gopal Sri Ram JCA speaking for the Court of Appeal considered the proposition to be well settled, relying on *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523, that unless the articles of a company provide to the contrary, no meeting of a board is valid unless reasonable notice of it, and the relevant agenda that is to be discussed at it, is given to the directors.

[20] Gopal Sri Ram JCA said:

> [82] ... In summary, the proposition contended for does not apply because:
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> > Firstly, *this is not a case where insufficient notice of a meeting was given. It is a case in which no notice whatsoever was given. This is not a case of a mere irregularity but of a nullity. ... How can it ever be said that a director's removal at a meeting of which notice to him is withheld is a mere irregularity?* When the question is put in this way, it seems clear to me that the proposition contended for falls so short of our own standards and concepts of corporate fairness that I find it entirely unacceptable. ...
>
> [83] Whilst particular cases may be distinguished upon their special facts, *I take the proposition to be well settled that, unless the articles of a company provide to the contrary, no meeting of a board is valid unless reasonable notice of it and the relevant agenda that is to be discussed at it is given to the directors*. *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523 is authority for that proposition. In that case it was held:
>
> > that where a special meeting of a committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting, and accordingly the omission to summon one member of a committee and *the fact that the notice did not state the object of the meeting with sufficient particularity vitiated the proceedings of that body.*
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> (per Abdoolcader J in *Public Prosecutor v Datuk Haji Harun bin Haji Idris & Ors* [1977] 1 MLJ 180 at p 189; [1976] 1 MLRH 559).

Australian cases

[21] The Australian cases also took a similar position. In *Dhami v Martin and Others* (2010) 79 ACSR 121 at paras 47–51 (Supreme Court of New South Wales), Barrett J held that where the purpose of a meeting is expressly stated, the meeting will be limited to addressing the specified business. The meeting cannot decide on matters not on the agenda. At Held [vi] of the reported judgment it was stated:

> (vi) *The power to convene a meeting of the board of directors is a fiduciary power and should be exercised to facilitate collective deliberation and informed decision-making by*

the board as a whole. The notice of meeting given by Mrs Dhami was materially misleading and in breach of duty. The consequent unfairness infects the proceedings of the meeting as whole, or at least the parts of it affected by the misleading conduct. In the highly unusual circumstances of this case, the appointment of Mrs Dhami as the agent of Ace on issues concerning the debt was therefore void: at [42]–[57]. (Emphasis added.)

[22] Barrett J said:

[47] No provision of the constitution requires the notice by which a meeting of directors is convened to state the business proposed to be transacted. Nor is there any general law requirement to that effect, so far as meetings of directors are concerned: *La Compagnie de Mayville v Whitley* [1896] 1 Ch 788; *Eastern Resources of Australia Ltd v Glass Reinforced Products (GRP) Pty Ltd* [1987] 2 Qd R 31; (1986) 10 ACLR 496. The general principle is that directors should come together whenever called on notice of reasonable length and without any expectation of being told why they are being summoned to a meeting.

[48] *But here, of course, the director summoning the meeting chose to notify the meeting's purpose. In that respect, she went beyond the legal requirement. This brings different considerations into play. A director receiving the notice would have thought that the director summoning the meeting had done so with a view exclusively to the stated purposes*. If it had been intended by the convening director that the meeting would potentially range over the whole of the company's affairs and deal with anything and everything that might be brought up, the notice would either have stated no proposed business or concluded with words such as:

> To transact such other business as may be lawfully brought forward.

[49] Mrs Dhami neither desisted from stating any purpose nor chose to make the purpose open-ended by means of a concluding agenda item of this kind. She chose instead to notify specific and limited purposes, making it clear that, as far as resolutions and decision-making went, she envisaged only one decision within the competence of the board, being a decision whether or not to appoint an administrator of Ace: item 2 in the notice. ...

[50] *With boundaries thus set by Mrs Dhami, she and Mr Brien proceeded, in the absence of Mr Martin and Mrs Martin, to step beyond those boundaries. They did so by purporting to pass a binding resolution making one of them the 'authorised representative of the company and its board'* for a particular purpose; and this was done in circumstances where the two who attended and participated in the decision must be taken to have known that the other two, if present, would not have (or very likely would not have) concurred in the result ...

[51] Where there is a requirement that the notice convening a meeting state the purpose of the meeting or the business proposed to be transacted, the position is as stated in *McLure v Mitchell* (1974) 6 ALR 471 at p 494; (1974) 24 FLR 115 at p 140:

> The purpose of a notice of a meeting is to enable persons to know what is proposed to be done at the meeting so that they can make up their minds

whether or not to attend. The notice should be so drafted that ordinary minds can fairly understand its meaning. It should not be a tricky notice artfully framed (*Henderson v Bank of Australasia* (1890) 45 Ch D 330 at p 337).

[52] The position must be the same where the person summoning the meeting chooses to state what is proposed to be done at the meeting, even though there is no requirement that he or she do so and the meeting would have been properly convened by a notice that did not state a purpose. *A statement of purpose actually included by the summoning person, whether or not required, is put forward in order that those entitled to attend can decide whether or not to do so*. Indeed, in the context of a board of directors where there is no requirement that the proposed business be stated, there is no other conceivable reason for a statement of purpose. The implied message conveyed by the statement of purpose and its inclusion is that the meeting is being summoned not to do anything and everything that the board of directors has power to do and may decide to do but for the particularly defined and limited purpose notified. *The need for the statement to convey a fair description of the purpose on which a decision to attend or not may reliably be based is therefore both emphasised and obvious.* (Emphasis added.)

[23] *Dhami* was followed by the Federal Court of Australia in *Bentley Capital Ltd and Another v Keybridge Capital Ltd* [2019] FCA 1675 at paras 41–44. At Held [i] of the reported judgment it was stated:

Held, declaring that the resolutions purportedly passed by the directors on 10 and 16 July 2019 were invalid and of no force and effect:

(i) *The resolutions passed at two board meetings were not valid because each board meeting was convened for a specified purpose, yet the resolutions purportedly passed at each meeting were unrelated to that specified purpose*. The directors were entitled to assume that to the extent any business was to be transacted outside the disclosed purpose of the meeting, they would be given notice. They were entitled to assume that if a matter arose during the course of a meeting that was outside the disclosed purpose, there would be no resolution absent consensus or due notice such that the proposal could be considered by all directors: at [140]–[145], [148], [156]. *McLure v Mitchell* (1974) 6 ALR 471; (1974) 24 FLR 115, applied. *Dhami v Martin and Others* (2010) 79 ACSR 121; (2010) 241 FLR 165; [2010] NSWSC 770, followed. (Emphasis added.)

[24] In *Efstathis v The Greek Orthodox Community of St George* [1989] 1 Qd R 146, the full court on appeal held that where the notice of a meeting specifies the business to be dealt with at the meeting, the general rule is that no other business can be embarked upon at the meeting unless the entire body corporate is present and consents to change the item under consideration. At Held [i] of the reported judgment it was stated:

Held, allowing the appeal: (1) That the fact that the constitution did not require a notice calling a special general meeting to specify the business to be transacted thereat did not displace *the basic rule that where notice was given that particular*

business will be transacted at a meeting no other business could be embarked upon at that meeting unless the whole-body corporate was present and consented.

McLure v Mitchell (1974) 6 ALR 471; (1974) 24 FLR 115 referred to.

[25] Kelly SPJ said:

It is true that there is no requirement in the constitution that the notice of a general meeting, whether special or otherwise, should specify the business to be conducted at the meeting. However, *where the business is specified, as was the case here, then the rule to which I have referred applies with the result that the meeting is confined to dealing with those matters so specified.*

...

It follows from what I have said that *the special general meeting could consider no other business than that which was within the scope of the business indicated in the notice of that meeting given to the members of the community and the motion which dissolved the entire council and provided for the holding of new elections not being within the scope of such business was consequently invalid.* (Emphasis added.)

[26] The defendant does not dispute the cases advanced by the plaintiff but contends that I should follow the High Court cases of *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312(HC) and *Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors* [2021] 8 MLJ 243(HC) which held that an agenda of business to be transacted is not required to be given by law.

[27] I decline to follow *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312(HC) as the Court of Appeal in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770; [1995] 1 MLRA 546 (CA) had declined to follow *Dr Mahesan* on the ground the decision in *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523 was not brought to the attention of the learned judge there. This is what Gopal Sri Ram JCA said:

[85] *I pause to note that the decision in Young does not appear to have been brought to the attention of Plowman J in Bentley-Stevens nor to Zakaria Yatim J in Dr Mahesan. It is difficult, if not impossible, to predict what the decisions in these two cases may have been if that had been done.*

[86] In arriving at my conclusions upon the matter at hand I have derived considerable support from the judgment of my learned brother VC George JCA in *Chan Choon Ming v Low Poh Choon & Ors* [1994] MLJU 351; [1994] 3 MLRH 798; [1995] 1 CLJ 812; [1994] 3 AMR 2751, where he said:

The directors are the primary organ of a company. They have powers conferred on them to manage the company. These powers are conferred upon the directors collectively as a board. Prima facie, they can be exercised only at a board meeting of which due notice has been given and at which a quorum is present. And

A although majority decision prevails, *it is trite that a meeting of the majority without notice to the minority is ineffective — Re Portugese Copper Mines* [1889] 42 Ch D 160 *Young v Ladies' Imperial Club, Limited* [1920] 2 KB 523. The exception to this, not relevant here, is that if all the directors are present and consciously made a decision, that decision will not be ineffective simply because formal notice was not given — *Swiss Screens (Australia) Pty Ltd v Burgess & Ors* [1987] 11 ACLR 756, 758.

B

[87] Useful reference may also be had to *Mitropoulous v The Greek Orthodox Church and Community of Marrickville & District Ltd* [1993] 10 ACSR 135. (Emphasis added.)

C

[28] As for *Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors* [2021] 8 MLJ 243 (HC) this case can be distinguished as on the facts the court held that the constitution of the first defendant did not mandate that the notice of directors' meeting shall include the matters to be discussed (at paras 33–34). Further the Australian cases referred to above were not brought to the attention of the court there.

D

[29] In conclusion, I hold that a board of directors cannot discuss and decide on a matter not stated in the agenda. I also hold the removal of a director is not valid if it was not on the agenda in the notice of a board of directors meeting.

E

DECISION

[30] I allow the OS prayers (i) to (v) with costs of RM30,000 subject to allocatur.

F

OS prayers (i) to (v) allowed with costs of RM30,000 subject to allocatur.

Reported by Dzulqarnain Ab Fatar

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